IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4416 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RASIKLAL LALJIBHAI PATEL

Appearance:

1. Special Civil Application No. 4416 of 2003

MS MONALI H BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/01/2004

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation has

approached this Court under Article 227 of the Constitution of India to challenge the judgment and award passed by the Labour Court, Valsad in Reference (LCV) No. 657 of 1999 dated 15th March, 2002. Vide said award the petitioner has been directed to reinstate the respondent on his original post with continuity of service. However, it has denied the payment of back wages to the respondent.

2. The facts in nutshell can be stated as under :-

2.1. According to the respondent, he was serving with the petitioner for 12 years prior to the date of the alleged incident i.e. 3rd September, 1996, as driver. At the relevant time he was working at Ahwa Depot in the district of Valsad. It is alleged that on that day i.e. 3rd September, 1996 between 12.00 noon and 12.30 p.m. he had been to the Administrative Branch of the depot and he had misbehaved with three employees of the petitioner. They were also threatened by the respondent that he would see to them [... Gujarati] in the evening after 5.00 O'clock. The persons with whom he is alleged to have misbehaved were Mr. R.M. Patel, Mr. V.S. Ninama and Mr. Babubhai R. Patel. In respect of this act of misconduct, he was served with a charge-sheet dated 20th September, 1996 and he was called upon to reply to the same within 7 days of the receipt of it. The respondent, however, replied to it on 8th November, 1996. Subsequently the petitioner initiated departmental proceedings against the respondent and at the end of the same he was held responsible for committing the aforesaid act of misconduct. He was thereafter served with a show cause notice dated 20th March, 1997 calling upon him why the order of dismissal should not be passed against him. To the said show cause notice the respondent had replied on 28th March, 1997. Later on vide order dated 23rd April, 1997 the competent authority of the petitioner dismissed him from the service.

2.2. The respondent preferred appeal against the said order of dismissal on 9th May, 1997, but the Appellate Authority vide order dated 29th October, 1997 dismissed the same. He thereafter preferred Second Appeal to the Second Appellate Authority on 8th December, 1997 which was also dismissed by the said authority. He thereafter approached the Labour Court in view of the reference made by the Labour Commissioner, Valsad under the provisions of section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act').

2.3. Before the Labour Court it was averred by the

respondent that he had been dismissed from the service on account of the prejudice and the vengeance and he had been falsely charge-sheeted for the alleged act of misconduct. He had further averred that before passing the order of dismissal, as required under section 6 of the relevant procedure, the authorities have not taken into consideration the past record of the service of the respondent. Therefore, request was made to the Labour Court to exercise power u/S. 11-A of the I.D. Act and to interfere with the order of dismissal passed against him.

2.4. The said proceedings were contested by the petitioner by filing its reply at Exh. 9. In the said reply it was averred that on 3rd September, 1996 between 12.00 noon and 12.30 p.m. the respondent behaved in a rude manner with his superior officers and even threatened them with dire consequences. It was further averred that previously also the respondent had on different occasions created trouble in the office by his misbehaviour and on 5th December, 1992 he had, while on duty, beaten some of the employees of the depot. According to the petitioner, during all occasions the respondent had misbehaved with his superior officer and apart from that, he had also committed different offences for which he was even visited with penalty. It was further averred that considering the facts and circumstances of the case, the reference was required to be dismissed.

3. At the hearing before the Labour Court, both the sides produced necessary evidence to substantiate their respective cases. The Labour Court, after taking into consideration the entire material placed before it, came to the conclusion that though the act of misconduct was adequately proved against the respondent, the order of dismissal of the respondent from service was very harsh and grossly disproportionate to the nature of the misconduct alleged against the respondent. The Labour Court, therefore, while exercising powers under Section 11-A of the I.D. Act, came to the conclusion that because the penalty was very harsh, the order of dismissal was required to be interferred with. He, therefore, exercised powers under section 11-A of the I.D. Act and quashed and set aside the order of dismissal and directed the petitioner to reinstate the respondent on his original post without back wages. It is this order which is now under challenge before this Court.

4. Miss Monali Bhatt, learned advocate appearing for

the petitioner has submitted that the judgment and award made by the Labour Court are absolutely erroneous and they are required to be quashed and set aside. She has further submitted that the respondent was a habitual offender and on many previous occasions he had misbehaved with his co-employees as well as superior officers and thereby he had flouted the disciplinary rules. It is further contended that when the petitioner has been penalized for serious acts of misconduct, the Labour Court's intervention was uncalled for and now it will require this Court to interfere and quash and set aside the judgment and award of the Labour Court. She has lastly submitted that when the discipline of the Department itself is in jeopardy, no leniency could be shown to the concerned employee i.e. the delinquent - respondent.

4.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has supported the judgment and award of the Labour Court. He has further submitted that the Labour Court has rightly come to the conclusion that the imposition of punishment of dismissal was very harsh and it is required to be quashed and set aside. He has for that purpose placed reliance on the decisions of the Apex Court as well as this Court, reference to which will be made in due course.

5. Having gone through the record of this petition as well as having carefully considered the impugned order, it is very clear that the respondent had misbehaved with his superior officers as per the allegations levelled against him by the petitioner. It also appears that on previous occasions the respondent had indulged into such activity and had not only abused the concerned officers, but had even administered threats of beating them. Considering all the circumstances on record, which were placed before the Inquiry Officer, the Labour Court thought it fit to reinstate him without back wages.

6. The question that would arise for consideration is whether the decision of the Labour Court is proper. When the Labour Court on the strength of the material which was placed before it, has come to the conclusion that the punishment imposed by the Disciplinary Authority on the respondent was very harsh and grossly disproportionate to the gravity of the offence which he was alleged to have committed and it, therefore, exercised its power under Section 11-A of the I.D. Act, it was not proper for me to reappreciate the entire evidence and interfere with the award of the Labour

Court. It is well settled principle of law that when the validity of the inquiry is not challenged by the concerned delinquent, the scope of judicial review of the sentence imposed by the Disciplinary Authority becomes very narrow under Section 11-A of the I.D. Act. However, when the Labour Court, after considering the entire material placed before it, has come to the conclusion that the punishment imposed upon the respondent was grossly disproportionate, the said fact is not required to be gone into again by this Court so as to disturb the finding of the Labour Court and that too in a petition filed under Article 227 of the Constitution of India. It may be noted here that so far the act of misbehaviour with the superior officer is concerned, though it has been viewed as a serious offence by this Court as well as by other Courts, it is also laid down by the Apex Court and this Court that the punishment of dismissal from the service is not required to be imposed. The Apex Court in the decision in the case of Ved Prakash v. M/s. Delton Cable India (P) Ltd. reported in AIR 1984 S.C. page 914 has held as under :-

"It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are, therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rs.1,000/-. The writ petition is dismissed without costs."

Similarly in the case of Union Bank of India v. K.G. Shah reported in 1998 (1) L.L.J. at page 760 the Division Bench of this Court has taken a similar view. When such is the approach by this Court and the Apex Court, it is difficult for me to interfere with the judgment and award made by the Labour Court. No doubt unlike case before the Apex Court, in the present case the respondent found responsible for committing such acts on previous occasions also, but the Labour Court has found that in the present proceedings no opportunity was afforded to respondent in what circumstances he had committed the previous acts. In the opinion of Labour Court it violated principles of natural justice. Further the Labour Court has also found that respondent had properly explained the present act of misconduct by stating that on account of his mother's illness he sought transfer in Ahmedabad Division to enable him to take care of his ailing mother, but no decision was being taken in that behalf by his superiors and that had agitated him. In these circumstances, the Labour Court has thought it fit to give him one more chance to improve. At the same time it has denied back wages to him to teach him a lesson. When that is the approach adopted by the Labour Court, it cannot be termed as unreasonable or perverse.

6.1. Miss Bhatt has cited a decision rendered by the learned Single Judge of this Court [Coram : Jayant Patel, J.] in the case of M.S. Thakore v. State of Gujarat reported in 2003 (1) G.L.H. at page 666 in support of her contention that the misconduct of the petitioner was of a serious nature and the punishment imposed by the Disciplinary Authority of dismissal from the service was just and proper. It is true that in the said decision it has been held that the act of misbehaviour with the superior officers by using rough language amounts to indisciplined behaviour which is required to be viewed very seriously. However, if the facts of that case are perused closely, they would show that the petitioner of that case belonged to police force and it is a matter of common knowledge that observance of discipline is of paramount consideration in the police force. Further that it was also alleged against the petitioner of the said case that while on duty he was found in drunken condition and in such condition he had misbehaved with his superior. Ofcourse later on he was acquitted by the Criminal Court of the charge under the Bombay Prohibition Act, but the fact remains that in the inquiry it was alleged that he had misbehaved in a drunken condition. That is not the case here. It also appears from the record of this petition that except using some rough language with the superior officers and

giving them some threats, nothing more has been done. When the Apex Court even in the case where the filthy abuses were used by the concerned employee, had taken a lenient view and had observed that punishment of dismissal from service was quite harsh and held charge to be flimsy one, the decision taken by the Labour Court for quashing and setting aside the order of dismissal cannot be termed as so unreasonable so as to calling for the interference by this Court. In view thereof, the submission of Miss Bhatt cannot be accepted.

7. At this stage, it has been brought to the notice of this Court by Mr. Rathod that despite the order of reinstatement passed by the Labour Court, the petitioner has not reinstated the respondent on his original post. It is also stated that though the petition was admitted, no interim relief was granted by this Court staying the award of the Labour Court. In that view of the matter, the petitioner is directed to reinstate the respondent on his original post, within a period of six weeks from the date of the judgment, so as to comply with the direction of the Labour Court. Since the respondent was willing to work by joining the duty but he was not permitted to do so, the petitioner is directed to pay to the respondent his full salary from the date of the award till reinstatement.

With this direction the petition is dismissed with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.